

2. Complying with North Carolina Farm Labor Regulations

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Tobacco growers who employ workers must comply with the ever-changing federal and state farm labor laws. This includes laws pertaining to migrant labor, tax withholdings, minimum wage rates, and insurance. This brief summary of those laws includes information about the formation of a migrant labor union in North Carolina during 2004. Please note that this summary provides only a *general* overview of the laws that affect farm workers. For detailed information about your legal requirements as an agricultural employer, contact the appropriate agency.

Farm Labor Organizing Committee

On September 16, 2004, the North Carolina Growers Association (NCGA) agreed to recognize the Farm Labor Organizing Committee (FLOC), a union that represents migrant farm workers. Growers who employ H2-A workers through the NCGA must withhold union dues of 2.5 percent from the salaries of migrant workers who join the union. Agricultural employers must allow union officials to inspect farms where NCGA workers are employed. Worker disputes will be addressed as described in the grievance agreement between NCGA and FLOC. Agricultural employers who employ H2-A workers not obtained through the NCGA do not have to recognize the union.

Immigration

The Immigration Reform Control Act of 1986 (IRCA) requires employers to hire only U.S. citizens and aliens who are authorized to work in the United States. Employers must complete the I-9 form for every employee hired after 1986. The I-9 must be completed within the first 3 days of employment or on the first day of employment if the length of employment is less than 3 days. Employers must keep the I-9 either for three years or for one year after the end of employment, whichever is longer. The I-9 form is designed to

verify an individual's identity and eligibility to work in the United States. An employer *must* accept documents that are listed on the I-9 as verification. An employer is *not* allowed to request additional documentation or to refuse documents that appear authentic. Employers may not refuse to hire a worker whose employment authorization expires at a later date. For forms and additional information about this requirement, contact United States Citizenship and Immigration Services, Charlotte Suboffice, 6130 Tyvola Centre Drive, Charlotte, NC 28217, or visit the bureau's Web site: www.uscis.gov.

Employment Discrimination

An employer must consider all qualified applicants. The Civil Rights Act of 1964 prevents employment discrimination against individuals because of their membership in a protected class. Employment includes, but is not limited to, the employment application, hiring, promotion, pay, and termination. Protected classes are currently defined as race, color, religion, sex, age (40 and older), disability, and national origin. For details, contact the U.S. Equal Employment Opportunity Commission, www.eeoc.gov.

Taxes

Social Security and Medicare Taxes

In 2007, agricultural employers must withhold and pay Social Security taxes on wages paid to their employees if they employ one or more agricultural workers (including parents, children age 18 or older, or spouses) and meet either of these two requirements:

- They paid the employee \$150 or more in cash wages during the year.
- They paid a total of at least \$2,500 in cash wages to all employees during the year.

The Social Security rate is 6.2 percent for both employee and employer portions. The maximum annual wage on which Social Security taxes must be paid is \$94,200 for 2006 and \$97,500 in 2007. Medicare tax remains at 1.45 percent for both employee and employer, with no wage limit. Self-employed producers must pay both portions of

the Social Security and Medicare taxes. Agricultural employers are exempt from withholding and paying Social Security taxes on wages paid to work-authorized aliens under the H2-A program. For more information, contact the United States Social Security Administration or visit the agency's Web site: www.ssa.gov.

Income Taxes

Agricultural producers must withhold federal and state income taxes from agricultural wages if the wages are subject to Social Security tax withholdings. Each employee should complete both form W-4 (Employee's Federal Withholding Allowance Certificate) and form NC-4 (North Carolina Employee's Withholding Allowance Certificate). The employer should keep copies of both documents.

Unemployment Tax

Employers must pay federal and state unemployment tax if they paid cash wages of \$20,000 or more for agricultural labor during any calendar quarter in the current or preceding year or if they employed at least 10 persons in agricultural labor for some portion of the day in 20 different weeks during the preceding calendar year. H2-A wages are considered for meeting the \$20,000 wage test. This tax may not be deducted from the employee's salary. Federal unemployment tax is paid only on the first \$7,000 of each employee's wages. The federal tax rate is 6.2 percent, but a credit of up to 5.4 percent is usually granted, depending on the situation. North Carolina unemployment tax is paid only on the first \$17,800 of each employee's wages in 2007. The state tax rate is between 0 and 6.84 percent, depending on the credit or debt ratio. The new-business starting rate is 1.2 percent. For detailed information about income-based taxes, contact the appropriate agency:

*U.S. Internal Revenue Service
The IRS has 10 local offices in North Carolina. To find the nearest office, phone 1-800-829-4933 or visit www.irs.gov.*

*N.C. Department of Revenue
501 North Wilmington Street
Raleigh, NC 27604
1-877-252-3052
www.dor.state.nc.us*

Workers' Compensation

Any agricultural employer who regularly employs 10 or more full-time workers must purchase workers' compensation insurance from a private insurer to cover employees should they sustain an injury on the job or contract an occupational disease. Agricultural employers who employ H2-A workers must have workers' compensation insurance regardless of the total number of employees. Specific information is available from the North Carolina Industrial Commission, (919) 807-2500, www.comp.state.nc.us.

Minimum Wage

In 2007, the North Carolina minimum wage will be \$6.15 per hour for all workers paid by the N.C. Wage and Hour Act. Agricultural workers are exempt from the N.C. Wage and Hour Act. Therefore, employers are *not* required to pay agricultural workers \$6.15 per hour. Agricultural workers continue to be covered under the federal minimum wage law and must be paid at a rate of at least **\$5.15 per hour**. Workers paid a piece rate must earn at least the equivalent of \$5.15 per hour. Agricultural employers are exempt from paying the minimum wage if they employed fewer than 500 man-days of agricultural labor in any quarter of the preceding year. A *man-day* is defined as any day in which one employee is employed for 1 hour or more. A farm will generally fall under the man-day provision if six or fewer full-time employees are hired.

Travel time to a job site is considered as hours worked, and the employee must be paid for those hours if his or her job would be affected in any adverse way by not using company transportation. For example, if the employee receives instructions during the trip, loads equipment on vehicles, or is required to use company transportation, the trip time must be considered as hours worked. For additional information, contact the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, 1-866-4-US-WAGE, or visit the division's Web site: www.dol.gov/esa/whd/.

Overtime

The United States Department of Labor's new Fair Pay Overtime Initiative does not affect agricultural labor. Agricultural employers are

still exempt from paying overtime (1.5 times the regular hourly wage rate for any hours worked in excess of 40 in one week). Christmas tree production is considered forestry, not agriculture, and is not exempt. If an employee performs a mix of agricultural and nonagricultural work within the same week, such as working in the field and selling products at a roadside stand, then the entire week is considered nonexempt. For additional information, contact the U.S. Department of Labor's Wage and Hour Division at the address noted above.

Child Labor Provisions

The minimum age for working in agriculture is 16 if the job is considered hazardous or is performed during school hours. Minors of age 14 or 15 may work in agriculture if the job is not during school hours and not hazardous. An exception is made for operating hazardous equipment if the minor has completed the 4-H training programs for tractor and machine operation through the Cooperative Extension Service of a land-grant university and received the appropriate certification. Minors of age 12 or 13 may be employed with their parents' written consent on a farm where their parents are also employed. Minors of any age may be employed at anytime in any occupation on a farm owned and operated by their parents.

In North Carolina it is illegal to hire any youth under age 18 unless the youth and a parent or guardian have completed a youth employment certificate, a form provided by the North Carolina Department of Labor. The employer must keep a copy of the properly signed and witnessed certificate on file. This certificate serves as an official statement of the child's age and will serve as a defense for accusations of some child-labor violations. To obtain a youth employment certificate or further information, contact the N.C. Department of Labor, 1-800-NC-LABOR, or visit the department's Web site: www.dol.state.nc.us.

No child under age 12 may ride in an open bed or cargo area of a vehicle that is without permanent overhead restraining construction. Exceptions may be made under particular circumstances, such as when an adult is present in the bed or cargo area of the vehicle and is supervising the child. For detailed information about vehicle safety laws, contact the Governor's Highway Safety Program, N.C. Department of Transportation, 1-800-999-9676, or visit the program's Web site: www.ncdot.org/secretary/ghsp/.

Joint Employment

The term *joint employment* denotes a situation in which an individual is considered an employee of two or more persons. Joint employment situations often arise with individuals employed by farm labor contractors and farm owners. If a joint employment relationship exists and a crew leader is unable to pay wages to workers or taxes to the government, then the farm owner could be liable. Joint employment is determined by the following factors:

- nature and degree of control over workers
- degree of supervision
- power to determine pay rates
- right to hire, fire, or modify employment conditions
- preparation of payroll and payment of wages

Vehicle Insurance

Agricultural employers, in general, are subject to the Migrant and Seasonal Agricultural Worker Protection Act (MSPA) if they employed 500 man-days of labor during any calendar quarter. The MSPA requires \$100,000 worth of vehicle insurance for every seat in the vehicle. For example, a 15-passenger van must have \$1.5 million of insurance. The maximum requirement, including buses, is \$5 million per vehicle. For additional information about vehicle insurance, contact the U.S. Department of Labor, 1-866-4-USA-DOL, or visit the department's MSPA compliance site: www.dol.gov/dol/compliance/comp-msawpa.htm.

Farm Labor Contractors

A farm labor contractor is a person who recruits, solicits, hires, employs, furnishes, transports, or houses agricultural labor. Commonly known as a *crew leader*, such a contractor works mostly with migrant or seasonal workers. A farm labor contractor must obtain the appropriate authorization certificates to house and transport laborers and drive the transportation. Under the joint employment laws, if a farm labor contractor is not certified in a function and performs it, then the farm owner could be held liable. The appropriate certificates of authorization may be obtained by the farm labor contractor from

the Wage and Hour Bureau of the North Carolina Department of Labor or from any office of the North Carolina Employment Securities Commission.

*N.C. Department of Labor
Wage and Hour Bureau
1-800-NC-LABOR
www.nclabor.com/wh/wh.htm*

*N.C. Employment Securities
Commission offices are located
across the state. To find an office in
your area, call (919) 733-4329 or
visit www.ncesc.com.*

Migrant Housing

If an agricultural producer provides housing to one or more migrant or seasonal workers, the workers are covered under the Migrant Housing Act. The producer must register the housing and notify the North Carolina Department of Labor 45 days before any workers arrive. The housing must meet certain standards, which can be obtained from the North Carolina Department of Labor's Bureau of Agricultural Safety and Migrant Housing. To register migrant housing, call (919) 807-2923 or obtain the registration form online: www.nclabor.com/ash/ashform.htm.

Field Sanitation

Agricultural employers who employ 11 or more workers on any given day or provide housing for one or more workers must provide the following:

- one field toilet per 20 workers or fraction thereof
- hand-washing facilities
- suitable cool, potable drinking water with individual cups

Poster Requirement

Some North Carolina employers are required to place government posters in conspicuous places that explain employee's rights. These posters are available free of charge from the Web site listed below. Not all operations will be covered by the same statutes, so the requirements vary by individual business. Visit the following Web site

to determine which poster you are required to display:
<http://www.dol.gov/osbp/sbrefa/poster/matrix.htm>.

New Hire Reporting

North Carolina employers are required to report to state government the names, addresses, Social Security numbers, dates of birth, and dates of employment of all new employees. Employers are also required to report their names, addresses, and state employer identification numbers. This must be done within 20 days of a new hire's initial employment. An employer can complete a special form or make a copy of the new employee's W-4, plus the additional information, and send it to the New Hire Reporting Program, P.O. Box 900004, Raleigh, NC, 27675-9004. An employer can also submit the information electronically at www.ncnewhires.com. For more information, call 1-888-514-4568.

The North Carolina Department of Labor administers the state's labor laws. For detailed information about wages and overtime, child labor laws, migrant labor, work conditions, and other labor laws that affect agricultural workers, contact the department at 1-800-NCLABOR, www.dol.state.nc.us.